

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY OWEN YARYAN,

Defendant-Appellant.

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UNPUBLISHED

December 15, 2011

No. 300763

Oakland Circuit Court

LC No. 2007-215573-FH

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

This case returns to us after this Court's remand for resentencing. Defendant now appeals by right his resentencing for two counts of making a false report of terrorism, MCL 750.543m, and two counts of using a computer to commit a crime, MCL 752.796; MCL 752.797(3)(f). On resentencing, the trial court imposed the same sentence originally imposed: concurrent terms of 6 to 20 years' imprisonment on each of the convictions.<sup>1</sup> We affirm.

Defendant contends the trial court erred in assessing 25 points against him on offense variable 20, MCL 777.49a ("OV 20"). We review a sentencing court's scoring decision for an abuse of discretion to determine whether the record evidence adequately supports the scoring decision. *People v Wilson*, 265 Mich App 386, 397; 695 NW2d 351 (2005). An abuse of discretion occurs when the trial court chooses an outcome outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

OV 20 states, in pertinent part:

(1) Offense variable 20 is terrorism. Score offense variable 20 by determining which of the following applies and by assigning the number of points attributable to the one that has the highest number of points:

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<sup>1</sup> A different judge imposed the sentence on resentencing.

(c) The offender supported an act of terrorism, a terrorist, or a terrorist organization. 25 points

(d) The offender did not commit an act of terrorism or support an act of terrorism, a terrorist, or a terrorist organization. 0 points [MCL 777.49a.]

OV 20 specifically incorporates the definition of “act of terrorism” from MCL 750.543b as follows:

(a) “Act of terrorism” means a willful and deliberate act that is all of the following:

(i) An act that would be a violent felony under the laws of this state, whether or not committed in this state.

(ii) An act that the person knows or has reason to know is dangerous to human life.

(iii) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

In turn, the term “violent felony” includes “a felony in which an element is the . . . threatened use of physical force against an individual.” MCL 750.543b(h).

In his challenge to the assessment of points under OV 20, defendant relies on the fact that he was charged with and convicted of making a *false* report of terrorism. Defendant argues that an offender who is convicted of making a false report of terrorism cannot be assessed points under OV 20, because the conviction of making a false report precludes a finding that the offender committed or supported an act of terrorism.

We disagree. A sentencing court may consider facts of uncharged offenses and may assess points accordingly, if the record establishes the facts of the uncharged offenses by a preponderance of the evidence. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008); see generally *People v Ewing (After Remand)*, 435 Mich 443, 446; 458 NW2d 880 (1990) (Brickley, J.). In this case, the prior panel upheld the trial court’s denial of a directed verdict and indicated that the evidence was sufficient to allow a rational juror to conclude that defendant intended to “intimidate or coerce a civilian population.” *People v Yaryan*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2010 (Docket No. 286690) slip op p 4. The prior panel further stated, “the prosecution presented evidence that defendant authored and sent two e-mails to various individuals, including church members, and members of the media. The e-mails indicated that the author intended to engage in a killing spree, and even provided a list of targets in his second e-mail.” *Id.*

On resentencing, the trial court relied in part on the panel’s decision. The trial court stated:

[t]he Appellate Court took time to go through the conviction, what gave rise to the conviction, noted in particularity that the emails went to numerous individuals, that he communicated he intended to engage in a killing spree, even provided a list of targets in his second email. As such, it met the definition of an act of terrorism by showing the Defendant intended to intimidate or coerce a civilian population.

And while 100 points would not be appropriate, I think the facts of this case support the assessment of the points under OV 20, and so the Court—the objection to same is overruled.

Given the prior panel’s opinion, the trial court was within its discretion in finding, for the purpose of OV 20, that defendant had engaged in an act or a threat of terrorism.

Citing *Osantowski*, 481 Mich 103, defendant next asserts that a threat of terrorism cannot be scored as an act of terrorism under OV 20. In *Osantowski*, however, our Supreme Court specifically noted that a threat of terrorism may qualify as an act in support of terrorism for purposes of OV 20:

OV 20 does not address only acts of terrorism. Rather, defendant may receive 25 points if he “supported an act of terrorism, a terrorist, or terrorist organization.” MCL 777.49a(1)(c). Accordingly, a defendant convicted under MCL 750.543m merely of making a terrorist threat may receive points under OV 20 even if the record does not support a conclusion that he committed an act of terrorism; his threat may qualify as an act of support, justifying a score of 25 points. [*Osantowski*, 481 Mich at 111.]

In the same paragraph, the *Osantowski* Court stated that a sentencing court may assess points for conduct described in offense variables, even if the defendant was not convicted of that conduct. *Id.* The *Osantowski* opinion thus indicates that a defendant convicted of making a false terrorist threat may be assessed points for supporting an act of terrorism, if the record establishes by a preponderance of the evidence that the defendant supported an act of terrorism.

Here, by assessing 25 points against defendant under OV 20, the trial court determined that defendant’s acts of sending threatening e-mails were acts in support of terrorism for the purpose of subsection 1(c) of OV 20. Although the term “support” is not defined in OV 20, the trial court validly applied the common meaning of the term. See MCL 8.3a. The record demonstrates that defendant used a computer to aid an act of terrorism, i.e., he used a computer to send intimidating e-mails that threatened physical force against a particular civilian population. Accordingly, the trial court was within its discretion in concluding that defendant supported an act of terrorism and in assessing 25 points under OV 20.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Christopher M. Murray  
/s/ Pat M. Donofrio